

JAMES S. TERRELL (SBN: 170409)
Law Office of JAMES S. TERRELL
15411 Anacapa Road
Victorville, California 92392
E-mail: jim@talktoterrell.com

SHARON J. BRUNNER, (SBN: 229931)
Law Office of SHARON J. BRUNNER
14393 Park Avenue, Suite 100
Victorville, CA 92392
E-mail: sharonjbrunner@yahoo.com

Attorneys for Plaintiff
JUSTIN CODY HARPER

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Plaintiff,	)	Case No.: 5:23-cv-695
)	
JUSTIN CODY HARPER)	
	)	COMPLAINT FOR DAMAGES
Vs.)	
)	
CITY OF REDLANDS, REDLANDS	)	1. Fourth Amendment –
POLICE DEPARTMENT, POLICE	)	Excessive Force (42 U.S.C.
OFFICER KOAHOU, and DOES-10,	)	1983)
Inclusive.	)	2. Battery
	)	3. Negligence
Defendants.	)	4. Negligent Infliction of
	)	Emotional Distress
	)	5. Violation of Cal. Civil Code §
	)	52.1
	)	[DEMAND FOR JURY TRIAL]
)	
)	

1
2
3 **JURISDICTION AND VENUE**
4

5 1. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331
6 and 1343(a)(3)-(4) because Plaintiff asserts claims arising under the laws of the
7 United States including 42 U.S.C. § 1983 and the Fourth and Fourteenth
8 Amendments of the United States Constitution. This Court has supplemental
9 jurisdiction over Plaintiff's claims arising under state law pursuant to 28 U.S.C. §
10 1367(a), because those claims are so related to the federal claims that they form
11 part of the same case or controversy under Article III of the United States
12 Constitution.
13
14
15

16 2. Venue is proper in this Court under 28 U.S.C. § 1391(b) because
17 Defendants reside in this district and all incidents, events, and occurrences giving
18 rise to this action occurred in this district.
19

20 3. Plaintiff filed a timely claim under Government Code § 911.2 et al. on
21 March 7, 2022, and rejected by operation of law, failing to respond, and brings
22 pendent action under state law.
23
24

25 **INTRODUCTION**
26

27 4. This civil rights and state tort action seeks compensatory and punitive
28 damages from Defendants for violating various rights under the United States

1 Constitution and state law in connection with this officer-involved shooting of
2 Plaintiff on September 9, 2021.
3

4
5 **PARTIES**

6 5. At all relevant times, JUSTIN CODY HARPER ("PLAINTIFF") was an
7 individual residing in the CITY of San Bernardino, California.
8

9 6. At all relevant times, Defendant **City of REDLANDS** ("CITY") is and was
10 a municipal corporation existing under the laws of the State of California. CITY is
11 a chartered subdivision of the State of California with the capacity to be sued.
12 CITY is responsible for the actions, omissions, policies, procedures, practices, and
13 customs of its various agents and agencies, including the REDLAND'S POLICE
14 DEPARTMENT ("CITY") and its agents and employees.
15
16

17 7. At all relevant times, Defendant CITY was responsible for assuring that the
18 actions, omissions, policies, procedures, practices, and customs of the and its
19 employees and agents complied with the laws of the United States and of the State
20 of California. At all relevant times, CITY was the employer of Defendants
21 OFFICER Koahou and DOES 1-10.
22
23

24 8. Defendant **OFFICER KOAHOU** ("KOAHOU") is and was at all times
25 herein mentioned a Officer employed by Defendant CITY OF REDLANDS. He is
26 being sued in his individual capacity and in his official capacity as an Officer for
27 the CITY.
28

1 9. On information and belief, DOES 1-10 were residents of the CITY of
2 REDLANDS, CITY of San Bernardino.

3
4 10. In doing the acts and failing and omitting to act as hereinafter
5 described, Defendants DOES 1-10 acting on the implied and actual permission and
6 consent of Defendants CITY and DOES 6-10.

7
8 11. The true names and capacities, whether individual, corporate,
9 association or otherwise of Defendants DOES 1-10, inclusive, are unknown to
10 Plaintiff, who otherwise sues these Defendants by such fictitious names. Plaintiff
11 will seek leave to amend this complaint to show the true names and capacity of
12 these Defendants when they have been ascertained. Each of the fictitiously-named
13 Defendants is responsible in some manner for the conduct or liabilities alleged
14 herein.

15
16
17 12. At all times mentioned herein, each and every defendant was the agent of
18 each and every other defendant and had the legal duty to oversee and supervise the
19 hiring, conduct, and employment of each and every defendant.

20
21 13. All of the acts complained of herein by Plaintiff against Defendants were
22 done and performed by said Defendants by and through their authorized agents,
23 servants, and/or employees, all of whom at all relevant times herein were acting
24 within the course, purpose, and scope of said agency, service, and/or employment
25 capacity. Moreover, Defendants and their agents ratified all of the acts complained
26 of herein.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

14. Plaintiff repeats and re-alleges each and every allegation in paragraphs 1 through 13 of this Complaint with the same force and effect as if fully set forth herein.

15. This incident occurred on SEPTEMBER 9, 2021, at approximately 1:30 p.m. in the CITY OF REDLANDS, CITY of San Bernardino.

16. Plaintiff JUSTIN HARPER (“HARPER”) was operating a vehicle in the City of REDLANDS at approximately 1:30 p.m. on September 9, 2021, when Defendant Officer KOAHOU was pursuing Plaintiff HARPER.

17. Plaintiff HARPER did not yield to the traffic stop. A pursuit ensued with Defendant KOAHOU chasing Plaintiff HARPER a short distant.

18. Plaintiff HARPER crashed the vehicle that he was operating into another vehicle and shortly thereafter, attempted to steal another vehicle. HARPER jumped in vehicle with the engine running, and was in the driver’s seat of the vehicle, where he attempted to drive away.

19. Redlands Police Officer, Defendant Nick KOAHOU, verbally gave orders to that he would tase HARPER, and he did tase the Plaintiff. The taser was extremely effective as the powerful electric shock involuntarily caused HARPER to slam his foot down on the accelerator.

20. Defendant Officer KOAHOU immediately started shooting his service weapon at HARPER who was inside the vehicle. KOAHOU without warning

1 decided to use deadly force. Plaintiff KOAHOU posed no danger to Defendant
2 KOAHOU. KOAHOU did not evaluate the situation, he just started shooting.
3

4 21. Based upon information and belief, KOAHOU did not assess the situation,
5 he began to shoot. No warning, no attempt to deescalate the situation, no
6 immediate danger, KOAHOU used deadly force. The deadly force was excessive.
7

8 22. KOAHOU did not give commands or notice that he was going to shoot
9 HARPER. KOAHOU did not seek cover. KOAHOU did not see any weapon that
10 would indicate that he was in danger, the vehicle HARPER was operating posed
11 no danger.
12

13 23. The instantaneous firing of his weapon resulted in HARPER being shot by
14 two rounds. One of KOAHOU's bullet was lodged in HARPER'S left femur. The
15 second round fired by KOAHOU struck HARPER'S left knee.
16

17 24. PLAINTIFF has had two or three surgeries and it is believed future
18 surgeries will be necessary. The use of deadly force was excessive force.
19

20 **FIRST CLAIM FOR RELIEF**

21 **Fourth Amendment —Excessive Force (42 U.S.C. § 1983)**
22 **(Against Defendants Plaintiff Against KOAHOU and Does 1-10)**
23

24 25. Plaintiff repeats and re-alleges each and every allegation in
25 paragraphs 1 through 24 of this Complaint with the same force and effect as if fully
26 set forth herein.
27

28 26. Defendant Officer used excessive force against PLAINTIFF when he shot

1 HARPER. KOAHOU 's unjustified use of force deprived PLAINTIFF of his right
2 to be secure in his person against unreasonable searches and seizures as guaranteed
3 to PLAINTIFF under the Fourth Amendment to the United States Constitution and
4 applied to state actors by the Fourteenth Amendment.
5

6 27. Defendant Officer KOAHOU acted under color of law.
7

8 28. As a result of the foregoing, PLAINTIFF suffered great physical pain
9 and emotional distress, loss of use of his right ankle and foot, and loss of his
10 earning capacity.
11

12 29. The conduct of Defendant(s) was willful, wanton, malicious, and done with
13 reckless disregard for the rights and safety of PLAINTIFF, and therefore warrants
14 the imposition of exemplary and punitive damages as to Defendant KOAHOU .
15

16 30. The shooting was excessive and unreasonable, and HARPER posed
17 no immediate threat of death or serious bodily injury at the time of the shooting.
18 Further, Defendants KOAHOU 's shooting and use of force violated their training
19 and standard police officer training.
20

21 31. PLAINTIFF brings this claim suffering, emotional distress, loss of use of
22 his hand, loss of the use of his hand, and loss of enjoyment of life, for the violation
23 of PLAINTIFF's rights. PLAINTIFF also seeks attorney's fees under this claim.
24

25
26 ///

27 ///

28 ///

SECOND CLAIM FOR RELIEF

Battery

(Against Defendants KOAHOU and Does 1-10)

32. Plaintiff repeats and re-alleges each and every allegation in paragraphs 1 through 31 of this Complaint with the same force and effect as if fully set forth herein.

33. Named Defendants and DOE DEPUTIES 1-10, acting within the course and scope of their duties, intentionally shot PLAINTIFF and used unreasonable and excessive force against him. The use of excessive force on PLAINTIFF HARPER was intentional battery. Plaintiff does suffer emotional injury after being shot by Officer KOAHOU. As a result of the actions of Named Defendants KOAHOU and DOE DEPUTIES 1-10, PLAINTIFF suffered and continues to suffer from his injuries. Defendants DOE DEPUTIES had no legal justification for using force against PLAINTIFF, and their use of force while carrying out their duties as Officers was an unreasonable and non-privileged use of force.

34. As a direct and proximate result of the conduct of Defendants DOE DEPUTIES as alleged above, PLAINTIFF sustained permanent injuries and endured pain and suffering and emotional harm.

35. CITY is vicariously liable for the wrongful acts of Defendants KOAHOU and DOES 1-10 pursuant to section 815.2(a) of the California Government Code,

1 which provides that a public entity is liable for the injuries caused by its employees
2 within the scope of the employment if the employee's act would subject him or her
3 to liability.
4

5 36. The conduct of Defendants DOE DEPUTIES was malicious, wanton,
6 oppressive, and accomplished with a conscious disregard for the rights of
7 PLAINTIFF and PLAINTIFF, entitling PLAINTIFF, individually and as to an
8 award of exemplary and punitive damages as to Individual Defendants KOAHOU
9 and DOE DEPUTIES 1-10.
10
11

12
13 **THIRD CLAIM FOR RELIEF**
14 **Negligence**
(Against all Defendants Including KOAHOU)

15 37. Plaintiff repeats and re-alleges each and every allegation in
16 paragraphs 1 through 36 of this Complaint with the same force and effect as if fully
17 set forth herein.
18

19 38. Police DEPUTIES, including Defendants, have a duty to use reasonable
20 care to prevent harm or injury to others. This duty includes using appropriate
21 tactics, giving appropriate commands, giving warnings, and not using any force
22 unless necessary, using less than lethal options, and only using deadly force as a
23 last resort.
24

25 39. Named defendants and Does 1-10 breached this duty of care. Upon
26 information and belief, the actions and inactions of Defendants DOE DEPUTIES
27
28

1 1-5 and DOES 6-10 were negligent and reckless, including but not limited
2 to:

3
4 (a) the failure to properly and adequately assess the need to detain,
5 arrest, and use force or deadly force against PLAINTIFF;

6
7 (b) the negligent tactics and handling of the situation with
8 PLAINTIFF, including pre-shooting negligence;

9
10 (c) the negligent detention, arrest, and use of force, including deadly
11 force, against PLAINTIFF;

12 (d) the failure to provide prompt medical care to PLAINTIFF;

13 40. As a direct and proximate result of Defendants' conduct as alleged
14 above, and other undiscovered negligent conduct, PLAINTIFF suffered physical
15 pain and suffering. Also as a direct and proximate result of Defendants' conduct as
16 alleged above, PLAINTIFF suffered emotional distress and mental anguish.

17
18 41. CITY is vicariously liable for the wrongful acts of Defendants KOAHOU
19 and DOE DEPUTIES pursuant to section 815.2(a) of the California Government
20 Code, which provides that a public entity is liable for the injuries caused by its
21 employees within the scope of the employment if the employee's act would subject
22 him or her to liability.

23
24
25
26 ///

27 ///

28 ///

FOURTH CLAIM FOR RELIEF
(Negligent Infliction of Emotional Distress)
(Against KOAHOU)

42. Plaintiff repeats and re-alleges each and every allegation in paragraphs 1 through 41 of this Complaint with the same force and effect as if fully set forth herein.

43. Defendant KOAHOU breached his duty of care by using deadly force on PLAINTIFF HARPER. PLAINTIFF HARPER sustained physical and emotional injury by Defendant KOAHOU using excessive force without provocation.

44. Defendant Officer KOAHOU 's conduct was negligent.

45. Defendant Officer KOAHOU knew that shooting an unarmed and non-threatening individual would cause emotional harm.

46. Plaintiff does suffer emotional injuries after being shot by Officer KOAHOU .

47. CITY is vicariously liable for the wrongful acts of Defendants KOAHOU and DOES 1-10 pursuant to section 815.2(a) of the California Government Code, which provides that a public entity is liable for the injuries caused by its employees within the scope of the employment if the employee's act would subject him or her to liability.

///

///

FIFTH CLAIM FOR RELIEF
(Violation of Cal. Civil Code § 52.1)
(Against all Defendant KOAHOU)

48. Plaintiff repeats and re-alleges each and every allegation in paragraphs 1 through 47 of this Complaint with the same force and effect as if fully set forth herein.

49. California Civil Code, Section 52.1 (the Bane Act), prohibits any person from using violent acts or threatening to commit violent acts in retaliation against another person for exercising that person's constitutional rights.

50. Conduct that violates the Fourth Amendment violates the Bane Act.

51. On information and belief, Defendant KOAHOU, representing the CITY and acting within the course and scope of their duties, intentionally committed acts of violence against PLAINTIFF, including shooting him without justification or excuse, integrally participating in failing to intervene in the above violence and by denying him necessary medical care. Defendants' actions thus deprived PLAINTIFF of his right to be free from unreasonable searches and seizures and excessive force under the Fourth Amendment.

52. On information and belief, Defendants also retaliated against PLAINTIFF in response to his action of failing to stop/yield for a traffic stop.

53. On information and belief, Defendants intentionally and spitefully committed the above acts to discourage PLAINTIFF from exercising his civil

1 rights, to retaliate against him for invoking such rights, or to prevent him from
2 exercising such rights, which he was fully entitled to enjoy.

3
4 54. On information and belief, PLAINTIFF reasonably believed and understood
5 that the violent acts committed by Defendants Officer KOAHOU were intended to
6 discourage him from exercising his civil rights, to retaliate against him for
7 invoking such rights, which PLAINTIFF was fully entitled to enjoy.

8
9 55. Defendant's above-described conduct, while acting within the course and
10 scope of their duties for the CITY, constituted interference, and attempted
11 interference, by threats, intimidation and coercion, with decedent's peaceable
12 exercise and enjoyment of rights secured by the Constitution and laws of the
13 United States and state of California, in violation of California Civil Code § 52.1.

14
15 56. The conduct of Defendants was a substantial factor in causing
16 PLAINTIFF'S harms, losses, injuries, and damages.

17
18 57. CITY OF SAN BERNARDINO is vicariously liable for the wrongful acts of
19 DEPUTY KOAHOU pursuant to section 815.2(a) of the California Government
20 Code, which provides that a public entity is liable for the injuries caused by its
21 employees within the scope of employment if the employee's act would subject
22 him or her to liability.

23
24 58. Defendants are vicariously liable under California Law and the doctrine of
25 *respondeat superior*.

26
27 59. The conduct of Defendants DOE DEPUTIES was malicious, wanton,
28

1 oppressive, and accomplished with a conscious disregard for PLAINTIFF's rights,
2 justifying an award of exemplary and punitive damages as to Defendants DOE
3
4 DEPUTIES.

5 **WHEREFORE, Plaintiff prays for relief as hereinafter set forth.**

6
7 **PRAYER FOR RELIEF**

- 8
9 1. For general damages in a sum according to proof;
10 2. For special damages in a sum according to proof;
11 3. For Punitive damages (not as to CITY) in a sum according to proof;
12 4. For reasonable attorneys' fees pursuant to 42 U.S.C. 1983 § 1983;
13 5. For statutory civil penalties
14 6. For cost of suit herein incurred; and
15 7. For such other and further relief as the Court deems just and proper.

16
17 Dated: 4/19/2023

LAW OFFICES OF JAMES S. TERRELL

18 /s/James S. Terrell

19 James S. Terrell
20 Attorney for Plaintiff

21 Dated: 4/19/2023

LAW OFFICES OF SHARON J. BRUNNER

22 /s/Sharon J. Brunner

23 Sharon J. Brunner
24 Attorney for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

Dated: 04/19/2023

LAW OFFICES OF JAMES S. TERRELL

James S. Terrell

James S. Terrell
Attorney for Plaintiff

Dated: 04/19/2023

LAW OFFICES OF SHARON J. BRUNNER

/s/Sharon J. Brunner

Sharon J. Brunner
Attorney for Plaintiff